

# Board: Golf deal broken

Town says Johnson Golf violated  
North Hill management contract

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On Monday night, the town of Duxbury publicly accused Johnson Golf Management Inc. of nine separate violations of its management contract for the town-owned North Hill golf course on Merry Ave.

The Board of Selectmen's public hearing had been postponed by two weeks after Johnson received a restraining

order from the Middlesex Superior Court prohibiting town officials from discussing the issue. The gag order was lifted last week.

Selectmen chose not to take any action against Johnson at this meeting, but instead, listened to Duxbury Town Counsel Robert Troy explain the violations, while Recreation Director Gordon

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✓ NORTH HILL



# Town accuses Johnson Golf of contract violations

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Cushing provided background information. Attorney Stephen Follansbee, representing Johnson Golf Management, Inc. of Weston, rebutted the claims. Doug Johnson, owner of Johnson Golf, did not attend the meeting.

The alleged contract violations were listed in a Sept. 28 letter from Town Manager Richard MacDonald to Johnson.

They include the following: 1) failing to provide a surety bond as required by the contract 2) neglecting to pay the monthly rent on time 3) failing to timely pay the June payment-in-lieu-of-taxes 4) illegally operating a beverage cart on the golf course 5) submitting handwritten financial information instead of establishing a control and reporting system to audit course use 6) increasing membership and greens fees in 2009 in violation of a court order to manage the course under the terms of the 2008 contract 7) failing to submit an annual audit of the golf course by an independent auditor 8) sporadically providing the town with monthly financial and course reports and 9) establishing a holiday fee schedule without town approval.

Johnson's inability to get a surety bond is the most serious violation, according to Troy. The bond is the town's insurance if Johnson defaulted on the agreement or declared bankruptcy.

Johnson informed town officials in a letter this spring that his insurance company would not issue him a bond because of his lawsuit against the town.

Johnson, who has managed the course for the past 15 years, sued the town in 2008 after losing the management contract to Calm Golf of Rockland. In that lawsuit, Johnson claimed that Calm Golf was unqualified and that the town conspired against him. He was able to obtain a successful injunction against the town in Middlesex County court that has allowed him to remain in control of North Hill under the terms of his last contract, which ended in December 2008.

Troy said that the town could face financial jeopardy if it allowed Johnson to run the course without a surety bond. If Johnson is unable to continue managing the course for the upcoming season, the membership fees that Johnson collects from the public in November and December would be gone, said Troy. Also, the town would lose out on the \$100,000 annual payment and would have to run the course with only short notice.

Because Johnson does not have the surety bond, he has violated his contract with the town, said Troy.

"There is no nuance here. You have either satisfied the terms of the management agreement and contract or you have not," said Troy.

Troy pointed out that the surety bond problem is one of Johnson's own making. "When

Johnson says they couldn't get the bond because of litigation, they omit one very important fact: they're the ones who filed the litigation," Troy said.

Follansbee explained that Johnson couldn't obtain a surety bond because the current court-ordered management agreement did not have an ending date.

"We would respectfully suggest that is something that is determined by the court rather than an allegation of non-compliance here," said Follansbee. "It's a problem that we can solve if we work together ... whatever security is necessary in lieu of a performance bond, we'd be happy to provide that."

On the matter of timely rent payments, according to Troy and Cushing, Johnson has not made his rent payments on the first of the month as specified by the management contract.

Cushing said that the town had only been paid on the first of the months on two months — August and September 2010.

"All other payments were received after the first of the month," said Cushing.

"We can conclude that Johnson has violated that provision of the contract which requires the company to pay the rent on a timely basis," said Troy.

Follansbee denied this claim. He said Johnson has always paid the rent early because according to the contract, it is paid in arrears on the first of the month for the preceding month, meaning, for example, that the March payment is due April 1.

Follansbee admitted that Johnson was late paying the June 2010 payment in lieu of taxes, coming at the end of June not on June 1, but he insists that because the rent was paid before July 1, this payment was covered.

Follansbee further asserted that there has been no illegal beverage cart at North Hill. Troy said he has letters submitted from the public stating that there has been such a cart on the course for many years.

According to Troy, Johnson has failed to submit annual audits of his business at North Hill.

"The town has not received an audit as of yet," said Troy. "This is a violation of the management contract."

Follansbee disagreed, saying that Johnson had "always provided audits" and that his accountant was currently working on an audit and would submit it when it was done.

Troy also said the town had received many complaints from the public about Johnson raising the membership rates and greens fees.

According to the contract, the fees can be raised every three years. Cushing said they were last increased in 2007 and that 2010 would have been the next time they could be raised. However, Cushing said that Johnson raised the fees in 2009.

In an Oct. 4 letter to the



town, Johnson stated the following: "The last increase prior for memberships was 2007. It stayed the same in 2008. As a result, 2009 becomes the third year."

He added that there was no greens fee increase in 2009 and that they only were raised \$1 in 2010.

Selectman Betsy Sullivan took issue with how Johnson submitted his financial information, on hand-written forms on which the figures are "are scratched out and barely legible."

"This is not generally acceptable accounting practices," she said.

Follansbee said Johnson had been submitting hand-written financial pages because that is what he was told to do by the Recreation Department when he first started running the course 15 years ago.

Troy told selectmen that it was important for them to act soon.

"Once Johnson collects fees in November, they've given themselves the procurement," he said. "This has turned the law on its head."

"They made the decision to take the money and not file a bond," he added. "Where does that leave the town? Nervously hoping they make it through the season."

Selectmen Chairman Shawn Dahlen said the board would review the information given Monday night and make a decision on the alleged contract violations at their Oct. 18 meeting.

Troy told selectmen they had four choices: first, take no action; second, decide that Johnson violated the management contract and order him to take "appropriate and remedial action;" third, decide that the allegations against Johnson are serious enough that they can terminate the contract; and fourth, have the town put the contract out to bid again.

Sullivan said she wanted more information, specifically all the rent collected by the

town from Johnson to see if it was paid in a timely manner. Cushing said he has records of all deposits dating to 1989.

In his letter to the town, Johnson said that "it makes no sense" to have a public meeting about contract violations because of the lawsuit. All information on alleged violations should be submitted to the court, he said.

"The sole effect of your meeting will be to create controversy as to who is operating the golf course, which will damage our business," stated Johnson. "This will lead to further damages that we will seek to recover."

Johnson disagreed with Troy's assertion that the town could force Johnson to vacate

the property. He wrote: "Only the judge who issued the injunction in February 2009 can do that."

Troy said there was a court date on the case set for November.

At the meeting's end, a resident wanted to speak about the case, but Dahlen denied him, saying that the selectmen were only taking information from the attorneys and one other person related to the case.

However, Selectman Christopher Donato wanted to allow the man to speak but Dahlen did not agree.

Because of this Donato cast the dissenting vote when selectmen voted 2 to 1 to close the hearing and take the case under advisement until Oct. 18.